IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 87 OF 2003

Rodya @ Santosh Dinkar Pawar & Anr. ....Appellants.
V/s
(Orig.Accd.Nos.1 & 2)
The State of Maharashtra ....
Respondents.

None for the appellants.

Mrs.S.D.Shinde, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

13th Nov., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Pune in Sessions Case No.444 of 2000 on 18.11.2002 the appellants-accused have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. Advocate for the appellant-accused was absent. However taking into consideration the fact that the case is pending for the last three years we deemed it just and proper to decide the case on merits with the assistance of the learned Additional Public Prosecutor. We have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution case stated briefly is that on 16.6.2000 at about 7.30 p.m. Deceased Asif Khan was standing in front of gate of PMC colony No.10. The complainant Akil saw his brother Asif and both the accused near the PMC Colony gate. Accused Nos. 1 and 2 came there and carried him towards a tamarind tree. When complainant returned back from bakery, his cousin Amjad Khan informed him that his brother Asif is taken by accused Nos. 1 and 2 inside the colony. Therefore he felt suspicious and rushed towards the tamarind tree and saw accused Nos. 1 and 2 assaulting his brother Asif 'with a koyata and knife. Complainant also raised shouts saying “Bachav”. Accused on hearing the shouts ran away. Complainant took injured Asif to Sassoon Hospital at 9.50 p.m. where Asif succumbed to injuries. P.S.I at Kasewadi police chowky on receiving information about quarrel, informed the police control room and called the police force. In the mean time he received information that Asif had died therefore he called complainant Akil Ahmed Khan and recorded his complaint.

4. Appellant No.1 was arrested on 18.6.2000, appellant No.2 was arrested on 17.6.2000. After completion of investigation charge sheet came to be filed before the J.M.F.C. For the offence punishable u/s.302 r/w 34 of Indian Penal Code and for the offence punishable u/s.135 of Bombay Police Act. The appellants claimed not to be guilty. Hence appellants were tried by learned Additional Sessions Judge, Pune and

were convicted for the offence punishable under section 302 r/w sec. 34 of IPC and were sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- each, in default to suffer further rigorous imprisonment for one month.

5. It is this order of conviction and sentence which is impugned in this appeal. The prosecution has examined as many as 11 witnesses to prove its case. PW4-Akeel Khan and PW5-Rashid Shaikh are the eye witnesses to the assault. Pws 1-Wazir Shaikh, 2-Prafulla Jani, 3-Malhari Bhise, 7-Shaikh Chand and 8-Ranjit Jasbhati are the panch witnesses who have proved various panchnamas such as spot panchnama, seizure panchnama of clothes of the accused, recovery of koyta at the instance of accused No.1-Rodya, recovery of sword at the instance of accused No.2-Kadya and their testimonies cannot be questioned as their cross examination does not reveal anything significant. It is via evidence of these persons that the prosecution has proved the spot where the assault took place, arrest of persons who committed the assault, seizure of clothes of the deceased, identification of weapons. Evidence of these panchas is duly corroborated by the documents prove on record and by deposition of PW11-Vasant Pawar, the investigating officer. Thus the evidence of panch witnesses is duly corroborated by testimony of PW11-Vasant Pawar and various panchnamas proved by them on record. The prosecution has through

the evidence of these persons proved the following:

i) The death of the victim was homicidal in nature as proved by PW10- Dr.Sudendu U.Belsare who conducted the post mortem;

ii) Recover of weapons used in the assault at the instance of accused Nos. 1 and 2;

iii) Injuries found on the person of the victim correspond to the injuries mentioned by eye witnesses in their deposition.

It is in this background that we have to appreciate the evidence of PW4-Akeel Khan and PW5-Rashid Shaikh who were eye witnesses to the incident. PW4 narrates the entire background to disclose the enmity existing between the accused and the 'victim and states how the assault took place. He say the accused assaulting the victim with skyth and stick. He was unable to prevent the assault but he identified the persons who were the assailants, he identified the weapons that were with them, he identified the clothes of the deceased and has very plainly admitted some omissions in para 10 of his cross examination. Those omissions as admitted by the witness prove the honesty of the witness in deposing before the Court whatever he factually saw. In our opinion, there is no reason why his evidence should be doubtful when its fully corroborated by the testimony of PW5-Rashid. A perusal of evidence of PW5-Rashid who is also an eye witness, describes the

manner in which assault took place. He speaks of presence of PW4. The evidence of Pws 4 and 5 both of whom were eye witnesses thus corroborates the oral testimony of each of them and we find substantial corroboration to this ocular testimony from the evidence of documents i.e. panchnamas exhibited and proved by various panch witnesses as narrated above.

6. Thus the evidence in its entirety was considered by the learned trial Judge in its proper perspective. He appreciated the same and came to the conclusion that the prosecution has proved beyond reasonable doubt the involvement of the accused in the death of the victim which was proved as homicidal. In our opinion, the conclusion are based on solid evidence and are not in any manner illegal. We have no hesitation in confirming those conclusions since we have on our independent reappreciation of the material evidence on record come to the same conclusion. In the result therefore the appeal fails and is dismissed.